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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,616	06/13/2007	Wilfried Maier	1401A-003 (C10151/A-US)	9956
25215 7590 05/24/2010 DOBRUSIN & THENNISCH PC 29 W LAWRENCE ST SUITE 210 PONTIAC, MI 48342			EXAMINER NGUYEN, PHONG H	
			ART UNIT 3724	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,616	Applicant(s) MAIER ET AL.	
	Examiner PHONG H. NGUYEN	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18, 19 and 21-44 is/are pending in the application.
- 4a) Of the above claim(s) 21-29, 37, 38, 40, 41, 43 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 19, 30, 32-36, 39 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 37, 38, 40, 41, 43 and 44 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: they are directed to a detecting means which was restricted in the Restriction requirement dated 10/27/2008.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 37, 38, 40, 41, 43 and 44 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 42 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Claim 42 calls for the first conveyor belt being raised and lowered. This limitation is not supported by the original disclosure.

4. Claim 42 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear what kind of mechanism that facilitates lowering and raising the first conveyor belt.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 18, 19, 30, 32-36, 39 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 calls for the step of compressing the front shaped slice and the rear shaped slice such that the shape of the front shaped slice and the rear shaped slice are changed relative to the shape of the food product slices before the slices are piled up. It appears that the Applicant tries to claim the process in the conveyor 2 in Fig. 2 of the disclosure based on the phrase “before the slices are piled up”. However, when the slices are on the conveyor 2, they are not compressed. The compression happens when the slices begin to pile up.

Regarding claim 42, it appears that the process of stacking the slices is due to different speeds of the conveyor belts but not raising or lowering the first conveyor belt.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 18, 19, 30, 32-35 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley et al. (3,855,889), hereinafter Wiley in view of Walker et al. (5,095,684), hereinafter Walker.

Regarding claim 18, Wiley teaches a method of producing a food product portion comprising the step of:

a plurality of food product slices 130 cut off from a block of cheese 200; and

shaping the plurality of food product slices 130 to form a front shaped slice and a rear shaped slice on a means 82 at a spacing such that the front shaped slice and the rear shaped slice do not lie flat on a means 82;

deposit the plurality of food slices 130 on the means 82; and

conveying away the front shaped slice and the rear shape slice.

See Fig. 2.

Wiley does not teach the step of pushing up the rear shaped slice against the front shaped slice by reducing the conveying speed of the front rear shaped slice.

Walker teaches the step of pushing up a rear food article against a front food article by reducing a conveying speed of the front food article so that a plurality of food articles can be grouped together for packaging. See Fig. 1.

Wiley's cheeses slices are food articles and need to be packaged for sale.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide the step of pushing up a rear shaped slice against a front shaped slice as taught by Walker to the method of Wiley so that the slices can be grouped together for packaging.

Regarding claim 19, see Fig. 3 in Wiley.

Regarding claim 30, when the slices are conveyed on conveyor belts of Walker, the rear slice is pushed against the front slice. See 1 in Walker. Regarding the limitation of non stick property of the slices, the specification teaches that the non stick property is due to folded shape of the slices. Since Wiley teaches folding the slices, the non-stick property is inherent between two adjacent slices. Furthermore, the non-stick property can be achieved by providing a proper temperature for a cheese block and at a slicing station. It can be seen in a deli in a supermarket.

Regarding claims 32 and 33, a first conveyor belt 19 and a second conveyor belt 20 forming a conveying plane is best seen in Fig. 1 in Walker.

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Regarding claims 32 and 34, a first conveyor belt 22 being above the second conveyor belt 19 is best seen Fig. 2 in Walker.

Regarding claim 35, the speed of the second conveyor belt is less than the sum of the speed of the first conveyor belt and the speed of the slice falling from the first conveyor belt onto the second conveyor belt so that the slices are shingled. If the speed of the second conveyor belt is the same as the speed of the first conveyor belt, the distance between two adjacent food articles is the same. See col. 6, lines 21-48.

Regarding claim 42, patentability of claim 42 cannot be commented on at this time because the original disclosure does not teach the slices being stacked due to raising and lowering the first conveyor belt. Furthermore, it appears that the slices being stacked is due to different speeds of the first conveyor belt and the second conveyor belt and this limitation is taught by Walker.

9. Claims 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley et al. (3,855,889), hereinafter Wiley in view of Walker et al. (5,095,684), hereinafter Walker as applied to claims above, and further in view of Applicant's admitted prior art (page 6, lines 9-21), hereinafter AAPA.

Regarding claim 36, Wiley teaches using a rod (non-driven roller) for folding the slices.

AAPA teaches the art equivalents of non-driven rollers and rollers (trapezoidal rollers) for folding slices.

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Therefore, it would have been obvious to one skilled in the art at the time the invention was made to use a plurality of rollers for folding slices since it has been held that substituting equivalents known for the same purpose is obvious to one skilled in the art. See MPEP. 2144.06.

Regarding claim 36, see Fig. 3 of Wiley.

Response to Arguments

10. Applicant's arguments filed 02/02/2010 have been fully considered but they are not persuasive.

Claims 37, 38, 40, 41, 43 and 44 are directed to an invention that has been restricted before. Therefore, claims 37, 38, 40, 41, 43 and 44 are not examined on the merits in this Office action.

35 USC 112 rejections in previous Office action have been withdrawn. Newly amended claim 18 and new claim 42 present new 35 USC 112 issues.

Regarding the newly added paragraph in claim 18, there is a new 35 USC 112 issue which is explained in the 35 USC 112 rejection.

Claim 35 is explained more in detail per Applicant's request.

The Applicant argues that Walker and Wiley are not combinable because it is a goal of Walker to not damage the cookies. This argument is not persuasive. The deforming step is performed by Wiley but not Walker. Therefore, there is no issue of destroying the cookies. Walker teaches using conveyor belts with different speeds for grouping/compressing food products together for packaging. Wiley teaches making

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slices but does not teach compressing/grouping slices for packaging. Therefore, it would have been obvious to one skilled in the art to use Walker's conveyor belt system for grouping and packaging slices generated by Wiley's system.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **PHONG H. NGUYEN** whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy V. Eley/
Primary Examiner, Art Unit 3724

/Phong H Nguyen/
Examiner, Art Unit 3724
May 15, 2010